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Held at the Palais des Nations, Geneva,
on Tuesday, 21 November 1995, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Colombia (CAT/C/20/Add.4)

1. At the invitation of the Chairman, Mr. Vicente de Roux, Mrs. Carrizosa and Mr. Sandoval (Colombia) took seats at the Committee table.

2. Mr. VICENTE DE ROUX (Colombia), introducing his country's second periodic report (CAT/C/20/Add.4), said that he would avoid detailed references to its contents; rather he would be interested in hearing the Committee's observations on it. In relation to human rights and, in particular, the question of torture in Colombia, a number of measures had been taken, but the National Government continued to be confronted by various obstacles. The Government could not ignore the fact that cases of torture existed. In their reports, NGOs concerned with human rights had documented about 150 cases of torture annually. Such cases arose for political reasons in the context of the struggle between insurgent groups and the State. Official statistics were higher and recorded all cases of torture whatever their underlying motive.

3. In Colombian legislation torture was defined as a criminal offence. Acts of torture were committed by State employees (or with their acquiescence or at their instigation) and by private individuals. They were defined as offences in the Penal Code and included in official statistics, which recorded about 1,200 acts of torture per annum. Attention would be focused on politically-motivated torture in the context of the current internal armed conflict. In addition to government efforts in that area, other action had been taken to eliminate acts of torture. The report under consideration described a series of provisions, presidential guidelines and ministerial decrees intended to ensure that military and police personnel abstained from the practice of torture. In addition, internal police supervisory mechanisms had been reinforced.

4. The Public Prosecutor's Office had launched large-scale investigations of cases of torture. Nevertheless, problems had arisen with the military criminal justice system, which had been the subject of criticism both within and outside the country. Doubts had arisen as to its efficiency and reliability in the face of offences committed by military personnel. In a comparison of cases of torture involving military and police personnel for which information was available and those in which convictions had been brought, it was clear that the military criminal justice system had lacked effectiveness in the investigation and punishment of those offences. The Government was perfectly aware of that fact. Consequently, the President of Colombia had set up a commission to reform that system. It had been mandated to draw up a new draft Military Penal Code. It was composed of members of State monitoring bodies independent of the Government, government officials and the president of a prominent NGO active in the field of human rights.

5. The Commission's activities had been characterized partly by consensus and partly by dissent. It had been agreed to introduce two substantive amendments. The post of operational commander would be separate from that of

judge of first instance. In Colombia military criminal judges were the brigade commanders themselves in the first instance. That gave rise to serious doubts as to their impartiality and capacity to judge military personnel objectively. The Government had therefore proposed that a military judicial administration should be set up, completely separate from the structure of operational command, similar to models in many other countries. Legislation had also been proposed providing for the participation of victims as civil parties in military criminal trials. Until recently such a possibility had not existed, but now the Supreme Court of Justice had ordered that victims must have access to military criminal trials. Case-law opened the way to such participation but was not yet legally enshrined.

6. Other less significant but still relevant results had been achieved. For example, a Military Prosecutor's Office had been set up at the national level. Military criminal judges currently acted in the military garrisons. They were not sufficiently independent from brigade commanders or other officers. They were not attached to a body with national jurisdiction and were not supported by a military attorney-general. To overcome that difficulty the post of military prosecutor would be created, along the lines of a civilian Prosecutor. A senior military officer, such as a colonel or major, had great powers within his own brigade. However, he did not have the same power or influence as the public attorney-general, whose agents were able to travel to any part of the country to conduct investigations. Furthermore, powers were extended to the public prosecutor in military criminal trials, where he would now act as an independent and credible authority.

7. The factors giving rise to dissent could be divided into two categories, those relating to due obedience and those to service. In relation to the first category, a difference of opinion existed between the military personnel in the commission and the civilian officials (government representatives). Contrary to the military personnel, the civilian officials believed that due obedience could not be cited as a source of exoneration of criminal responsibility for crimes against humanity, including torture, as defined by international law. In relation to offences committed in the context of official duty, the civilian officials felt that the military judicial authorities could not hear crimes against humanity and that all such cases should be transferred to the ordinary judicial authorities. On the other hand, the military officers believed that due obedience should constitute a reason for exoneration of responsibility, including for crimes against humanity. Such offences could be considered as service-related acts and should therefore be subject to military criminal prosecution.

8. The Government was currently studying the two main areas of dissent highlighted by the commission. It should be noted, however, that on the question of due obedience, the President of Colombia had stated that, pursuant to the law penalizing serious cases of enforced disappearance, due obedience could not absolve people of responsibility for crimes against humanity. The Government had reached a similar conclusion on the basis of the 1991 Constitution. In discussions with the military judicial authorities, the Government had expressed the opinion that the stance taken on enforced disappearances should be extended to all crimes against humanity, including torture.

9. As to the significance of the term "service-related offence" and on the question whether the military judicial authorities could try such crimes as torture, there had been no previous government decision. The Ministry of Defence was currently exploring that subject in a study of the reform of the Military Penal Code. Consideration was being given to the possibility of a provision under which offences covered by human rights treaties to which Colombia was or would become a party could not be tried by a military court. The idea was currently being considered by the civilian judicial authorities. If such cases were transferred to military jurisdiction, the Military Penal Code would embody the provisions of specific international treaties. Until Colombia adopted the relevant international instruments, the different kinds of offences would, for the time being, be tried by the ordinary courts. The Government was studying those questions carefully since it realized that in order to combat the phenomenon of torture, very forceful action must be taken to prevent crimes such as torture from going unpunished.

10. Other steps were being taken to combat impunity, in addition to the reform of the military judicial system. The activities of the highly regarded Public Prosecutor's Office had been strengthened. It had demonstrated its capacity to prosecute high-ranking State officials, and it had recently set up a nationwide human rights unit composed of high-ranking investigators. The unit was supported by very competent auxiliary personnel in Bogotá responsible for ensuring that its members were not subjected to pressure or threats when they were working in the provinces. Such personnel lessened the burden on prosecutors, whose normally heavy workload had been reduced to enable them to deal with no more than four cases at a time. They were therefore able to concentrate on very serious violations of human rights. The human rights unit was expected to take up about 100 cases, and it had begun to make progress in investigating the massacres which had occurred in recent years. The Government had shown its support for the unit by extending financial assistance and providing facilities. It was hoped that, with such support, the unit would be able to clarify certain cases of systematic torture in some parts of the country.

11. The Government was also cooperating closely with international bodies, in particular the Inter-American Commission on Human Rights, in an effort to clarify the worst cases of human rights violations. A commission had been set up to investigate the Trujillo atrocities of 1990, which had included murders, tortures and enforced disappearances. The government authorities had been held responsible for the atrocities by a commission made up of members of NGOs, State monitoring bodies and government authorities. A number of recommendations had been made with the aim of averting cases of permanent impunity. The Government and the President had admitted responsibility for the events and accepted the views of the commission. During the most recent session of the Inter-American Commission on Human Rights, similar bodies had been set up to investigate other atrocities in Los Uvos and other places. In Los Uvos torture had clearly taken place prior to execution. In Trujillo there had been very strong indications of torture prior to enforced disappearance. Indeed, torture was often accompanied by other serious human rights abuses.

12. His Government was prepared to make further progress, in cooperation with State monitoring bodies and NGOs, in investigating serious human rights violations, irrespective of whether there had been recourse to international human rights bodies. One example of such openness on the Government's part was the establishment of an inter-agency commission to investigate individual cases, find evidence and make recommendations geared to specific regions, in particular the Department of Meta in eastern Colombia, where many cases of human rights violations, including torture, had come to light. Evidence had been found to strengthen the action of judges and prosecutors in elucidating the facts in the various cases. His Government remained open-minded about ways of combating impunity in specific cases of violations, and notably torture. It was hoped that the two main mechanisms referred to, i.e. the human rights unit attached to the Public Prosecutor's Office and the reform of the military judicial authorities, would create the conditions necessary for progress.

13. The issue of paramilitarism was also important. Concern had been expressed at the fact that the number of torture cases reported by NGOs showed no sign of declining. It was important to note that not only police and military officers carried out such acts. Within the framework of the "dirty war", paramilitary agents, claiming to be allied to the people, also perpetrated those crimes. Colombia had a very long tradition of violence. In the middle of the century, in the major political conflict between the conservative and liberal parties, almost 250,000 people had been murdered over an eight-year period. The population at that time had been about one third to one half of the current population, and the vast majority of murders had been politically motivated.

14. The phenomena of hyper-politicization and political sectarianism were still very widespread, and the country was currently beset by an internal armed conflict. The number of victims continued to increase year by year, the most recent annual total being 28,000. A small number (8 to 10 per cent) of those were the result of political murders, but the vast majority ensued from scattered social violence - street fights, family disputes and so on. About 12,000 guerrillas were involved in the armed conflict, and each one received logistical support from two or three auxiliaries in the form of food, information and weapons. The total number of people at war with the State was therefore between 30,000 and 40,000. The guerrillas claimed to want to transform Colombian society and to institute a fairer existence for all. In their operations they also committed ordinary crimes, such as abductions and extortion in the form of a "war tax". It was estimated that guerrillas were responsible for about 50 per cent of such crimes.

15. One of the most important guerrilla groups also participated in various drug trafficking activities; outside the conflict zone its members committed acts of homicide. They had also carried out "social cleansing" operations in their zones of influence by killing small-scale drug traffickers. Their wealth was growing and they were able to operate independently of their grass-roots support. In general, the guerrillas treated small landowners well. However, atrocities had been committed against large landowners and medium-sized farmers, and even the smaller landowners had been subjected to extortion. Since Colombia had not closed its internal borders, the guerrillas had been able to penetrate into the country's interior. That had given rise

to population movements and the unstable settlement of different areas. The military had withdrawn and enabled the guerrillas to act as they wished. The different groups of landowners had formed small defence groups and armed themselves.

16. Drug traffickers had purchased some of the best land. Their attitude towards the guerrillas was ambivalent. In some areas they allied themselves to the guerrillas, and in those areas where they had purchased land they fought against them when the guerrillas attempted to extort money from them. They formed paramilitary and self-defence groups for that purpose. According to an independent study highly critical of the Government, in two thirds of the municipalities where paramilitaries existed land had been bought by drug traffickers. Previously, the State had encouraged the formation of self-defence groups, pursuant to national defence legislation enacted in 1948 and 1968, to confront the guerrillas. However, the State had quickly discovered that the cure was worse than the actual disease. Owing to the tradition of hyper-politicization and sectarianism the peasant organizations had moved from the defensive to the offensive. They had attacked not only guerrillas but any forces slightly inclined towards the left. Such self-defence groups had therefore been outlawed. Nevertheless illegal links had persisted between members of police forces and self-defence groups, and the drug barons had begun to support and finance self-defence and paramilitary groups.

17. Unfortunately, owing to a lack of objectivity the idea had emerged that the paramilitaries were part of a government strategy and were supported and promoted by the State. The State was indeed aware of the seriousness of the problem of paramilitaries in Colombia, but it played no part in their formation. The possible extension of paramilitarism could lead to very serious problems for national unity and stability. The paramilitaries had emerged from many sectors of society in the fight against the guerrillas. The army and the police could not occupy the whole country. However, the Government hoped that the various activities undertaken would be effective in the fight against paramilitarism.

18. The powers of the Public Prosecutor's Office had been extended in that respect. Various paramilitary bodies had been dismantled through the capture and arrest of important leaders, including a former mayor, senator and police inspector. Others had been captured in the Department of Meta and had been discovered to be responsible for a large-scale massacre. Also, the Government had reactivated a high-level committee under the aegis of the Ministry of the Interior to combat the phenomenon of paramilitarism. The committee had set up search groups made up of police and army personnel whose aim was to arrest important paramilitary leaders. The Government was also studying the possibility of offering large rewards for information leading to the identification and arrest of the main paramilitary leaders.

19. It was hoped that the Government's current confrontations with some of the drug cartels, in particular with the largest of them whose headquarters was in Cali, would help to dismantle the paramilitary structure, particularly in the south-west of the country, which had been the scene of some of the most serious human rights atrocities.

20. Admittedly, paramilitarism had been neither defeated nor dismantled in Colombia and the "dirty war" linked to the paramilitary groups had not been eliminated. Senior military officers had made determined efforts to make it known that they would not be linked to paramilitary groups but would instead seek them out and dismantle them. It had been the internal conflict that had led to the existence of those groups and the State was determined to combat them through the Public Prosecutor's Office and with the assistance of the military and the police.

21. The members of his delegation were ready to answer any questions and comply with any additional requests the Committee might have.

22. The CHAIRMAN thanked the delegation for its detailed presentation describing the human rights situation in Colombia.

23. Mr. GIL LAVEDRA (Country Rapporteur) thanked the Colombian delegation for its second periodic report and its oral presentation describing the measures being taken by the Government to meet its commitments to the international community pursuant to the Convention.

24. He wished to focus on certain specific points and to pursue the dialogue initiated in 1989. The purpose of the presentation of initial and periodic reports and constructive dialogue between the Committee and the State party was to monitor each State's compliance with its obligations under the Convention. On the occasion of Colombia's presentation of its initial report (CAT/C/7/Add.1), the Committee had expressed concern on a number of points. Almost all members who had spoken had focused their questions and comments on areas where they considered the judicial system was in need of adaptation in order to bring it into line with the Convention.

25. In its conclusions the Committee had referred to the scope of due obedience in the light of article 2, paragraph 3 of the Convention, which specifically provided that due obedience could not be invoked as a justification of torture. It had objected to the treatment of the offence of torture; article 279 of the Penal Code had at that time provided a minimum penalty of three years' imprisonment for torture. The Military Penal Code had contained the same provision. The Committee had also raised objections to the subsidiary nature attributed to the offence of torture and voiced concern about the provisions in the Penal Code relating to the scope of extraterritoriality and extradition. Under Colombian law, both were made subject to certain restrictions by the express provisions of article 15, paragraphs 4 and 6, of the Penal Code. The principle required by the Convention had thus not been clearly reflected in Colombian legislation. The Committee had noted that there should be more specific provisions relating to article 3 to prohibit expulsions where there were substantial grounds for believing that an individual would be in danger of being subjected to torture, and also relating to the inadmissibility of evidence obtained under torture. The Committee had been informed that the Government intended to enact a number of amendments, possibly including a new Constitution, which would embody many of its observations.

26. He had mentioned those points to assist in the analysis of the current situation in Colombia. In his view, the situation had deteriorated. The Government of Colombia had not really acted on the Committee's recommendations and available information reflected a context of widespread violence that appeared more disquieting than that described at the 1989 session. He welcomed government efforts but noted their inadequacy, given the seriousness of the situation.

27. In many ways the Committee welcomed the new Colombian Constitution of 1991, which provided for a series of legal measures to protect human rights. Article 12 provided that no one should be subjected to enforced disappearance, torture or other cruel, inhuman or degrading treatment or punishment. He did not consider that Colombian legislation had created a more extensive protective framework than the Convention in respect of torture. No individual who committed torture should be treated with impunity. A particular objective of the Committee was to combat torture inflicted by public officials or with their consent.

28. Referring to Decree-Law No. 180 of 1988, which increased the penalties laid down in article 279 of the Penal Code to between 5 and 10 years' imprisonment, he asked the delegation why if, the Decree had been passed in 1988, it had not been mentioned during the discussion of the initial report in 1989. He did not understand why penalties for that offence had been increased in the ordinary Penal Code but not in the Military Penal Code. What made torture by military personnel a less serious crime? The Convention specifically covered torture inflicted by public officials and yet in that area Colombia had less severe penalties. The Committee had already stated in 1989 that Colombian legislation was not in conformity with article 4, as penalties did not sufficiently reflect the severity of the crime. The fact was all the more striking as the Military Penal Code covered both military and police personnel.

29. With regard to the treatment of torture as a subsidiary offence, he noted that the penalty for torture would be imposed unless the act constituted an offence liable to a more severe penalty. That approach was known as "express subsidiarity". Where two penalties could not both be imposed for a single act, one gave way to the other. As cases of express subsidiarity related to minor offences, he understood that the Colombian legislature had wished to imply that torture was such an offence.

30. The matter of due obedience had given rise to lengthy debate in Colombia. If in the past there had been any doubt about the scope of due obedience, the explicit wording of article 91 of the Constitution made matters crystal clear. The first paragraph of that article established the general principle that orders by a superior did not relieve the agent carrying them out of responsibility. However, the second paragraph explicitly exempted serving military personnel from that provision. Where they were concerned, responsibility would be borne solely by the superior who had issued the order. That article of the Colombian Constitution clearly did not comply with the commitment Colombia had assumed under the Convention.

31. On the subject of how international human rights treaties took precedence over internal legislation, he noted that article 93 made provision for an exemption. However, if international standards took precedence over internal legislation, did they also take precedence over the Constitution itself? Article 4 of the Constitution stated that the Constitution was the "standard of standards" and that in any case of incompatibility with other legal provisions, the Constitution would take precedence. Given the fact that treaties were embodied in laws, he requested clarification on that point.

32. With regard to the arguments put forward by the Government of Colombia concerning the prohibition against returning a person to a country where there was a risk of torture, as he understood it no such provision existed in Colombian legislation. The same observation applied to the extraterritorial application of laws and to extradition. Instead of an improvement, there had been a deterioration in the situation relating to the explicit prohibition of extradition in the case of nationals or foreigners accused of political offences. He asked whether that prohibition applied in the case of torture, because article 8 of the Convention provided for extradition for all cases of torture. Under articles 5 and 8 of the Convention, States parties should either judge the offence of torture or extradite the alleged perpetrator to another country which wished to do so. The offence of torture was always extraditable, whether or not a treaty existed. In his view, Colombian legislation did not reflect that provision and observations made by the Committee during the 1989 discussion remained valid. To illustrate that view, he mentioned a recent case of Colombia offering political asylum to a Haitian general found guilty in the United States of torturing six activists who had been campaigning for a return to democracy in Haiti. The prosecution of torture should be universal and torturers should not be able to find any place of refuge or asylum. That was the commitment undertaken by States parties to the Convention. He invited the delegation to comment on that matter.

33. There was a lack of specific provisions concerning the prohibition or invalidity of evidence obtained through torture. Paragraph 21 of the report stated that testimony, confessions or other evidence obtained by torture was not valid, but he saw no concrete proof of that in paragraph 26, which explicitly stated that assessment of the confession's value as evidence was subject to the rules of sound judgement. Any testimony obtained through torture was invalid; no other criteria should apply.

34. Information received to date from State bodies involved in monitoring law enforcement and safeguarding human rights, from United Nations bodies that had expressed opinions on the human rights situation in Colombia, from NGOs and from the Inter-American Commission on Human Rights all depicted the very delicate situation prevailing in Colombia. There was a serious crisis in the protection of the right to life. The Special Rapporteur on extrajudicial, summary or arbitrary executions had said that Colombia was the country in which the greatest number of urgent appeals to save lives had had to be made in 1994. In their joint report (E/CN.4/1995/111), that Special Rapporteur and the Special Rapporteur on the question of torture had stated that of the 28,000 to 30,000 annual violent deaths in Colombia, approximately 10 deaths a day could be linked to political factors and one or two to disappearance. The Attorney-General's 1994 report stated that in 1990 the ratio of complaints received for minor violations by security forces to complaints of torture had

been four to one; by 1993 the number of complaints in both categories had been about the same. Seventy-five per cent of the complaints had related to acts perpetrated by the army and the police. Two reports by the Ombudsman's Office reflected an alarming and tragic situation with regard to the protection of human rights. In the Attorney-General's first report mention was made of the fact that of the 100,000 inhabitants of the province of Arauca 23.16 per cent had been victims of torture. Another report by the Arauca Department of Justice stated that of 183 detainees 170 had been subjected to torture and their complaints had not been addressed.

35. He was providing those figures to demonstrate that to date the measures adopted had not been effective and should certainly not be scaled down. In fact, many of them had appeared to be counterproductive. While constitutional provisions relating to the remedy of habeas corpus appeared to be very effective, other measures ordered by the Government curiously enough removed that effectiveness. Act No. 15 of 1992 imposed restrictions on the remedy of habeas corpus in regional courts, which were those that dealt with the most serious cases of drug trafficking, terrorism and so on. He was of the view that that remedy, which was intended to expedite protection of freedom in specific circumstances, should not be subject to restrictions. The same comment applied to the Penal Code, which provided that the place of detention must be indicated for the remedy to be applicable. He shared the opinion of the Inter-American Commission on Human Rights, which in its second report on the human rights situation in Colombia had criticized the limitations on the remedy of habeas corpus. The Ombudsman's Office had also pointed to the fact that those restrictions had resulted in very limited use of the remedy of habeas corpus.

36. He would welcome clarification on the use of the "internal disturbance" provisions to deal with states of emergency. Setting deadlines for them, restricting them, and making them subject to supervision by the Constitutional Court seemed to him to be very effective measures. However, information received indicated that the internal disturbance provisions had in practice been used massively by the Government. Since 1991 the Government had four times declared a state of internal disturbance and issued 42 exemption decrees, thus curtailing individual rights. There was even a very recent decree (August 1995), and he would like the delegation's confirmation of that point, proclaiming a state of internal disturbance; the decree had been declared unconstitutional by the Constitutional Court. He referred to a report in the newspaper El Tiempo of 19 October 1995 according to which the Government had said that those restrictive measures should become permanent. He asked whether the state of internal disturbance was still in force.

37. It was military jurisdiction that appeared to have contributed most to the impossibility of implementing the law against impunity. The Human Rights Committee, the Inter-American Commission on Human Rights and the Special Rapporteurs had all strongly criticized military jurisdiction, as had State bodies responsible for monitoring respect for human rights. Both the Ombudsman and the Attorney-General had said that human rights violations were concealed by superiors, and the Ombudsman had added that history had demonstrated that assassins, torturers and individuals responsible for enforced disappearances not only escaped punishment but often received promotion and other benefits, much to the indignation of the public. The reports of the Attorney-General revealed that of 4,304 sentences handed down

by the military courts in recent years, 4,100 related to internal regulations and not to human rights questions. The situation with regard to disciplinary action was similar. The Attorney-General's 1993 report mentioned that in 234 cases of torture, initially 16 penalties had been ordered comprising one reprimand, four fines, seven suspensions and four dismissals; following appeals those had been reduced to one reprimand, one fine and four suspensions. Those figures were a clear demonstration of the situation prevailing with regard to impunity.

38. The notion of active service was being extended to such an extent that it created virtual personal jurisdiction. He asked for confirmation that in the case of a rape by a police commander in Huila, military jurisdiction had been established simply because the individual who had committed the rape had been wearing a uniform. As military personnel were in the service of the Republic 24 hours a day everything they did came under military jurisdiction and that fact was changing military jurisdiction into personal jurisdiction.

39. The possibility of detaining civilians in military units was authorized in Act No. 65 of 1993. It was the Government's intention to demilitarize and combat private armed units and other private groups which were clearly contributing to the climate of widespread violence. He voiced his concern that there were government provisions for setting up such groups. He referred to Decree No. 356 of 1994 setting up community rural safety associations that were private armed groups with intelligence functions. A report in El Tiempo on 3 April 1995 stated that the Government's intention was to set up 500 of those private groups. He wondered how that could be compatible with demilitarization. He would like more information on the working of the regional justice system and the situation regarding public prosecutors, witnesses and judges.

40. The Committee welcomed the Colombian Government's commitment to cooperate with it and was ready to look into the best ways to restore the rule of law and respect for human rights in Colombia. It wished to work together with the Government to that end. Much remained to be done, but the frankness shown by the Government was a good first step. He looked forward to hearing the Government's replies and to further constructive dialogue.

41. Mr. SLIM (Alternate Country Rapporteur), congratulating Colombia on the quality of its written report and oral statement, said the Committee had noted the extent to which the Colombian Government was endeavouring to implement the Convention through the incorporation of the provisions of the Convention into its domestic legislation. Those efforts were clearly visible in the changes to the Constitution, which now included the prohibition and definition of torture in article 12, using the same terms as in the Convention. However, it was not clear from paragraph 14 of the report whether Colombia's definition included mental, as well as physical, pain and suffering; he sought clarification on that point.

42. Despite Colombia's efforts, there were many areas where the Convention did not seem to be applied, and much more needed to be done. Paragraph 42 of the report, referring to article 93 of the Colombian Constitution, recapitulated the constitutional principle that international treaties and agreements took precedence over internal law. Was that principle monitored to ensure its implementation?

43. Paragraphs 62 to 64 of the report, relating to the penalties for torture in the Penal Code, mentioned two categories of torturer; he wondered how that distinction could be justified. Paragraph 65, moreover, implied that the Penal Code contained no specific offence of torture. If that was so, the situation was contrary to the Convention, which required States parties to ensure that all acts of torture were offences under its criminal law and to make those offences punishable.

44. Turning to the list of instructions for military personnel contained in paragraph 103 of the report, he noted that none of those instructions appeared to concern civilians such as medical staff, officials and agents of the State who might deal with persons who had been arrested. Article 10 of the Convention, however, required that such civilians should be given education and training to heighten awareness of the need to prevent torture.

45. In connection with paragraphs 104 and 105 of the report, he was unable to see how the institutional system operating in Colombia provided the systematic review of interrogation rules, instructions, methods and practices required under article 11 of the Convention, and sought clarification. He also failed to understand how article 25 of the Code of Criminal Procedure provided for the impartial investigation required by article 12 of the Convention.

46. With reference to article 13 of the Convention, as discussed in paragraphs 109 to 112 of the report, he asked whether all victims of torture could lodge complaints under the Code of Criminal Procedure. Lastly, Colombia's Penal Code did not appear to have any specific system of compensation for torture, as article 14 required.

47. Mr. SORENSEN congratulated Colombia on its frank report and, in particular, the admission that torture still existed in that country.

48. Paragraphs 102 and 103 listed the instructions given to military personnel. However, as article 10 dealt with education and training, the Committee wished to know how those persons were actually being trained to carry out those instructions. Furthermore, Colombia's provisions made no mention of the training of medical personnel. Given the fact that torture still existed in Colombia, the training of such personnel was of paramount importance. Doctors participated in torture before, during and after the event, first of all by examining the victim, then by ensuring that he did not die during torture, and lastly by treating him and, in the event of death, falsifying death certificates to ensure that torture was not mentioned. It was particularly important that doctors should be properly trained not only to enable them to recognize torture victims, but to help in eliminating torture. He therefore wished to know what kind of undergraduate and postgraduate training doctors received in such matters.

49. In connection with article 14 of the Convention, he sought clarification concerning the compensation given for moral damage, calculated in grams of gold, as referred to in paragraph 114 (a) of the report. In addition to redress and compensation, article 14 required States parties to ensure the means for as full rehabilitation as possible of torture victims. Such rehabilitation included medical rehabilitation. Given that the targets of torture were the strong personalities, such as politicians, journalists, trade

union and student leaders and so forth, who were tortured to prevent them from campaigning for human rights or other causes, it was particularly important to rehabilitate the victims and to enable them to function again. There was much knowledge on that subject and he was aware that some Colombians had already been trained in institutions in Denmark. He wondered, therefore, whether Colombia intended to support special rehabilitation centres for torture victims, since it had been proved that the only way to rehabilitate them was through special treatment provided by psychologists, doctors and other specialists.

50. Mr. BURNS said that, generally speaking, Colombia provided an extraordinary picture of a State in crisis with, on the one hand, very sophisticated formal systems of checks and balances within the constitutional, legislative and administrative structures, and on the other, a remarkable dichotomy between those structures and what was actually happening. Judging by the material provided to the Committee, that situation appeared to result from the way in which society had evolved and the distribution of wealth. In addition, the central authority often had to deal with problems created by military officers in the remoter parts of the country. At the same time, it was very difficult to comprehend the lack of professionalism and the brutality with which the police dealt with ordinary citizens even in large cities, many specific instances of which had been reported to the Committee.

51. A notable case which had been reported by Amnesty International in June 1994 in its report entitled "Colombia, children and minors: victims of political violence" was that of the rape and killing of a 10-year-old girl, Sandra Vázquez Guzmán, inside a Bogotá police station where she had gone to look for her father, a police officer. Initial statements by the Commander of the Bogotá police had indicated that the girl had been killed by her father. Subsequent disciplinary investigation had resulted in the dismissal from the police of the Commander of the police station, the deputy commander, a police lieutenant, a sergeant and three policemen for negligence or acts of omission in allowing the girl to enter the police station. The child's father was also facing dismissal from the police as a result of accumulated penalties. The Committee wished to know the results of the criminal investigation and would welcome the delegation's comments on the apparent fact that police stations were so unsafe that police officers could be dismissed for permitting young children to enter them.

52. Information had been given in the oral presentation and in NGO material on the number of acts of torture which had occurred annually in Colombia. Since there was no separate offence of torture in Colombia, and since it was stated in paragraph 65 of the report that most cases of torture were not investigated separately but in connection with criminal proceedings concerning offences such as homicide or abduction, he wondered where the statistics submitted to the Committee originated and asked the delegation to describe how they were compiled.

53. It appeared from paragraphs 84 and 85 of the report that native-born Colombians could not be extradited and that foreigners could be granted asylum, in which case extradition would not be granted. In the case referred to by the Country Rapporteur, a former Haitian political leader, who had assumed power through a coup d'état, had since been granted asylum in

Colombia. According to a newspaper report, he had been tried and found guilty, presumably in absentia, of six separate acts of torture in Haiti. Now that that information had been drawn to the attention of the Colombian Government, how did it intend to exonerate itself from its obligations under articles 6 to 8 of the Convention? Was it legally possible to do so?

54. In their conclusions published earlier in 1995 (E/CN.4/1995/111), the Special Rapporteurs on torture and extrajudicial, summary or arbitrary executions had stated that most of the torture, which was widespread in Colombia, was said to be used by the security forces, and by paramilitary and other armed groups working in parallel with them, if not as a direct part of their campaign. Torture might be used to extract information or confessions or to terrorize, and might occur before the victims were killed or subjected to enforced disappearance.

55. The Special Rapporteurs had also observed that while considering it inappropriate to affirm the existence of a planned policy of "systematic violation" of human rights, the Attorney-General, in his third report on human rights, had stated that the violations had been so numerous, frequent and serious over the years that they could not be dealt with as if they were just isolated or individual cases of misbehaviour by middle and lower-rank officers, without attaching any political responsibility to the civilian and military hierarchy. Even if no decision had been taken in the sense of persecuting the unarmed civilian population, the Government and the high military command were still responsible for the actions and omissions of their subordinates. He would welcome the delegation's comments on those conclusions.

56. Mrs. ILIOPOULOS-STRANGAS noted that the State authorized the formation of private armed security groups. Quite apart from the political problems which that posed for demilitarizing the country, she wondered whether the legalization of such groups did not mean that the individuals participating in them no longer fell within the ambit of article 1 of the Convention, which only covered public officials or other persons acting in an official capacity. Given Colombia's well-developed constitutional and legislative system, she asked how judges, whose task was to apply the law, were trained and appointed. Did the Constitution guarantee the independence and impartiality of judges? What was the Colombian Government's position with regard to recognizing, pursuant to article 22, the competence of the Committee to receive and consider communications from individuals?

57. Mr. REGMI said that despite the detailed information in the second periodic report of Colombia on its Constitution, laws and regulations, little was said about how the Convention was implemented in practice and what difficulties affected the implementation of the Convention. It was not enough to enumerate provisions of domestic legislation; enforcement of those provisions must be ensured.

58. It was a fact that torture and ill-treatment persisted in Colombia. How many members of the security forces and paramilitary and other armed groups working in parallel with them had been prosecuted for acts of torture or ill-treatment? Referring to the findings of the joint report on Colombia (E/CN.4/1995/111), he requested more information on what was being

done to combat torture. Pursuant to article 15 of the Convention, each State party must ensure that any statement made as a result of torture was not invoked as evidence. Was there any specific provision in criminal law to that effect, and if so, in how many cases had it been applied?

59. Could a victim of an act of torture obtain redress? And did he have an enforceable right to fair and adequate compensation, including rehabilitation? What procedure existed to compensate the victims of torture? Which was the authority competent to hear such complaints? How long did such proceedings generally last? And were statistics available on cases in which adequate compensation had been paid to the victims of torture or other ill-treatment?

60. Concerning the judiciary, he asked how its independence was guaranteed and how judges were appointed, trained and removed. According to the joint report (E/CN.4/1995/111), there were military criminal courts which handed down harsh sentences for violations of internal police or armed forces regulations, and those sentences were often excessive when members of the rank and file were involved. He asked the Colombian delegation to clarify that point.

61. He had received information from the Lawyers' Committee for Human Rights, the Andean Commission of Jurists (Colombian Section) and Amnesty International about serious human rights violations, including summary or arbitrary executions, disappearances, ill-treatment and torture. How many allegations had led to prosecution and punishment? And how many victims of torture had been compensated in accordance with article 14 of the Convention?

62. Mr. YAKOVLEV asked how the Ombudsman operated in practice. Would it be possible to obtain illustrations or statistics? Did the Attorney-General have the power to initiate proceedings in military cases? Where members of the military were implicated in a case of torture, was the military court competent to try the case, or must it be brought before another court? Could the Colombian delegation provide information on the powers and functions of, and decisions taken by, the administrative tribunals? Were statistics available on financial compensation in cases of torture?

63. Mr. EL IBRASHI noted that the joint report on Colombia (E/CN.4/1995/111) had given an account of a number of positive developments (para. 17): in his inauguration speech, the newly elected President Ernesto Samper Pizano had acknowledged that Colombia was facing a human rights problem and identified the question of impunity and so-called paramilitarism as main causes for persistent human rights violations; he had also vowed his Government's commitment to finding solutions to the human rights crisis and presented the measures his Government intended to adopt to fight impunity, provide better protection and defence of human rights, and eradicate paramilitarism. There had also been a number of welcome developments in the area of constitutional and legislative reform, and he referred in particular to the role of the Constitutional Court and that of the Ombudsman.

64. Turning to a number of specific paragraphs in the joint report, he asked what were the role, competence and relationship with the government authorities of the "private justice" groups referred to in paragraph 24. Was the State also responsible for acts of torture committed by members of those groups?

65. According to one NGO, the Ombudsman in his 1995 report on human rights, had described the situation as terrifying, on account of the scope and gravity of the complaints against public officials for criminal abuse of authority. More than 60,000 complaints had been processed, including nearly 950 against members of the armed forces and 790 against the National Police. Of those, 128 had been for torture and 462 for cruel, inhuman or degrading treatment. He was surprised that the Ombudsman should issue a report that was so damaging for the Colombian Government. What was the Ombudsman's role? How many cases had he submitted? What had been the response to his 1995 report?

66. Like Mr. Yakovlev, he would like to know whether the Attorney-General was involved in military cases or whether there was a special prosecutor in such instances. He was astonished to learn that the orders of a superior were to be regarded as legitimate, regardless of the circumstances. That appeared to be a clear breach of article 2, paragraph 3, of the Convention.

67. The Colombian report made a distinction between penalties for acts of torture imposed by ordinary criminal courts under article 279 of the Penal Code and penalties mandated by article 256 of the Military Penal Code. He had received confirmation from one NGO that whereas persons convicted of torture under the ordinary Penal Code were liable to 5 to 10 years' imprisonment, or even 15 to 25 years' imprisonment for acts of torture against public officials, the penalties for such acts in the Military Penal Code ranged from 1 to 3 years. Could the Colombian delegation confirm that such a distinction was drawn?

68. As to the question of compensation (Convention, art. 14), he said that paragraphs 113 to 117 of the second periodic report clearly showed the steps taken to guarantee the right of the victim to compensation. Like other members of the Committee, he was, however, surprised to read in paragraph 114 that compensation for moral damage was calculated in grams of gold. Was compensation also paid in gold?

69. The same section of the report explained that compensation could be obtained before the criminal courts, the civil courts or the administrative tribunals. Did the victim have any choice about the jurisdiction before which he would initiate proceedings? How did the jurisdiction of the civil courts differ from that of the administrative tribunals? If a civil action was initiated during or following a criminal action, was the outcome of the criminal action binding for the civil court? For example, what did it mean for the civil action if the criminal action ended in an acquittal? Was the compensation awarded following criminal proceedings different from that following civil proceedings?

70. Paragraph 68 of the core document (HRI/CORE/1/Add.56) stated that the authorities of the indigenous peoples could exercise jurisdictional functions within their territorial areas. Did that also include criminal jurisdiction? What kinds of cases could be heard? And did they include torture and ill-treatment?

71. He would like the delegation of Colombia to comment on three reports from Amnesty International on Colombia entitled "Violence is against our beliefs, our traditions, our being" (June 1994), "Children and minors: victims of

political violence" (June 1994) and "Political violence in Norte de Santander and south of Cesar Department escalates" (August 1995), which discussed specific cases and even contained photographs of torture victims.

72. The CHAIRMAN said that the large number of questions asked had shown the extent of the difficulties that Colombia was facing. As Mr. Burns had rightly pointed out, a dichotomy existed between the legal instruments and the actual situation. That resulted in part from ignorance of the law and the content of the Convention, and inconsistencies between the Convention and domestic law.

73. Citing, as Mr. Gil Lavedra had done before him, articles 5 and 8 of the Convention, he referred to the case of the Haitian general and torturer who had fled to Colombia, where he enjoyed complete impunity. As the Convention was not implemented under domestic legislation, were any other practical legal measures possible in order to initiate proceedings against that general and either prosecute him or extradite him?

74. Lastly, paragraph 17 of the joint report (E/CN.4/1995/111) stated that the President of Colombia had appointed a High Commissioner for Peace. How did the High Commissioner's functions differ from those of the Ombudsman?

The meeting rose at 1.05 p.m.